

HONORABLE RICARDO MARTINEZ

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

CITY OF ISSAQUAH, a municipal
corporation,

Plaintiff,

v.

ORA TALUS 90, LLC, a Delaware limited
liability company; and RESMARK EQUITY
PARTNERS, LLC, a Delaware limited liability
company,

Defendants.

ORA TALUS 90, LLC, a Delaware limited
liability company; and RESMARK EQUITY
PARTNERS, LLC, a Delaware limited liability
company,

Third-Party Plaintiffs,

v.

TERRA TALUS LLC, a Washington limited
liability company; ELEMENT RESIDENTIAL
INC., a Washington corporation; JOSHUA
FREED, an individual; J.R. HAYES & SONS,
INC., a Washington corporation; TERRA
ASSOCIATES, INC., a Washington
corporation; TALUS MANAGEMENT
SERVICES LLC, a Washington limited
liability company; and TALUS 7&8, LLC, a
Washington limited liability company,

Third-Party Defendants.

NO. 18-CV-00910 RSM

STIPULATED MOTION AND ORDER TO
CONTINUE TRIAL DATE AND RELATED
DEADLINES

STIPULATED MOTION AND [PROPOSED] ORDER TO
CONTINUE TRIAL DATE AND RELATED
DEADLINES - 1

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TALUS 7&8 INVESTMENT, LLC, a
Washington limited liability company; J.R.
HAYES & SONS, INC., a Washington
corporation,

Fourth-Party Plaintiffs,

v.

KULCHIN FOUNDATION DRILLING
COMPANY, a Washington corporation, and
BIG MOUNTAIN ENTERPRISE LLC, a
Washington limited liability company,

Fourth-Party Defendants.

AND RELATED COUNTERCLAIMS AND
CROSSCLAIMS

I. RELIEF REQUESTED

Pursuant to LCR 16(b)(6), the Parties, by and through their respective counsel, jointly move the Court to continue the trial date, presently set for February 22, 2021, by approximately five months to July 2021, or as soon thereafter as the Court is available, and to issue a new case schedule as outlined herein. In February of 2020, the Parties jointly requested, and the Court granted, a four-month continuance of the trial date and related deadlines. Dkt. No. 97. This motion represents the Parties' second request to continue the trial date and all related pretrial dates. Good cause supports this request for a trial continuance.

II. BACKGROUND FACTS

The instant litigation arises out of a November 2015 landslide on a section of real property, commonly referred to as Talus Parcel 9, located in Issaquah, Washington. The cause of the landslide, as well as the nature and extent of the alleged resulting damage, is complicated and disputed.

The City of Issaquah (the "City") initiated a lawsuit in June 2018 in King County Superior Court against the owners of Talus Parcel 9 for damage to the City's infrastructure and water

1 facilities caused by the landslide. The property owner removed the action to federal court, asserted
2 counterclaims against the City, and impleaded other parties alleging they are at fault for the City's
3 damages, if any, as well as the property owner's damages. Two of these third-party defendants,
4 in turn, impleaded two subcontractors. The parties have collectively asserted at least 30 claims,
5 counterclaims, and crossclaims amongst one another. The case involves 10 parties, represented
6 by over 20 lawyers from 13 law firms.

7 Discovery in this action is ongoing and extensive. The Parties have produced over 15,000
8 documents, many of which consist of dense construction project files and complicated engineering
9 records. Some of the parties have not completed their document productions and continue to
10 produce their responsive documents on a rolling basis. Additionally, a number of parties' written
11 discovery and document productions were significantly delayed during the coronavirus pandemic
12 and current stay-at-home order in the State.

13 Deposition scheduling has also been stymied due to the COVID-19 pandemic and resulting
14 stay at home orders in Washington and around the country. In February, the Parties had
15 collaboratively worked together to schedule approximately two dozen depositions to occur in
16 March and April. However, the Parties were subsequently forced to cancel these depositions due
17 to the rise of the pandemic in Washington (and around the country) in late-February and March.
18 By collective agreement, the Parties have since put all depositions on hold for the time-being given
19 the pandemic and pending Stay-At-Home Order in Washington and California (where lead counsel
20 for ORA Talus 90 resides). The Parties have held monthly teleconferences to discuss the
21 possibility of resuming depositions taking into account first and foremost the personal health and
22 safety of the witnesses, the court reporters, and counsel. During the Parties' teleconference on
23 April 30, 2020, counsel agreed that, given the number of parties and separate law firms involved,
24 as well as the volume of documents anticipated to be used at each deposition, in-person depositions
25 are preferred over video-conference depositions. The Parties, therefore, stipulated to hold off
26 scheduling depositions for at least another four weeks as they monitor the public health situation.

STIPULATED MOTION AND ORDER TO CONTINUE
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1 Thus, despite the Parties' efforts, the current June 5, 2020, lay discovery deadline is
2 proving unrealistic for the aforementioned reasons. The Parties have agreed to address scheduling
3 of approximately 30 fact depositions late this month, depending on state quarantine orders, with
4 the hope that these depositions can be held (with the appropriate social distancing and health
5 precautions) in July and August. The Parties agree that each fact witness deposition will last the
6 entire seven-hour allowable time period, unless the Parties agree that additional time is necessary
7 for a particularly key witness.

8 Additionally, the Parties expect at least 14 expert depositions will occur after the fact
9 witnesses. Expert analysis and subsequent reports cannot be finalized until the parties complete
10 the fact witness depositions. The experts will rely upon written documentation and fact witness
11 deposition testimony. The Parties anticipate each expert will require a substantial amount of time
12 to complete their analysis and issue written reports. Each expert will need to review the reports of
13 other experts in order to develop any rebuttal reports per the Federal Rules. All of these activities
14 must occur before each expert sits for a deposition. As with the fact witnesses, the Parties
15 anticipate each expert deposition will last a full day.

16 The Parties have fully cooperated in developing and proceeding with discovery. However,
17 despite significant effort and cooperation, and as a result of the COVID-19 pandemic, the Parties
18 cannot accomplish the fact witness depositions and expert discovery under the current case
19 schedule. The Parties also cannot adequately prepare for a February 2021 trial.

20 Counsel have diligently collaborated on discovery, including deposition scheduling. While
21 reluctant to seek a second trial continuance, the Parties concur that a minimal continuance of
22 approximately five months would allow the Parties to efficiently complete discovery and properly
23 prepare for mediation and trial, given current expectations about the pandemic.

III. AUTHORITY AND ARGUMENT

LCR 16(b)(6) binds the Parties to the Court's scheduling order after the Parties submit a Joint Status Report. LCR 16 authorizes the Parties to move the Court to amend or modify the case schedule upon a showing of good cause.

Due to the number of parties and number of counsel at different law firms, the complexity of the facts and issues involved in the case, the number of fact witness depositions that the parties will hold (some of which may be taken out of state), the number of expert witness depositions still to be scheduled, and, of course, the extensive delay that has resulted due to the pandemic and Stay-At-Home Order, the Parties agree that a continuance of the trial date is necessary. The Parties are cooperating in good faith to complete the anticipated discovery in a timely and efficient manner. The Parties have held several teleconferences to discuss written discovery and document productions as well as scheduling depositions; the Parties continue to communicate collectively and cooperatively regarding these issues.

Yet, complying with the current case schedule deadlines has become unrealistic given the delay caused by the COVID-19 pandemic and related Stay-At-Home Orders.

The Parties, therefore, request the Court continue the trial date and amend the case schedule (Dkt. Nos. 84, 85, 92, 97) as follows:

Motions related to discovery filing deadline

Current deadline: May 7, 2020

Requested deadline: October 14, 2020

Lay discovery completed by

Current deadline: June 5, 2020

Requested deadline: November 11, 2020

Expert Disclosures pursuant to FRCP 26(a)(2)

Current deadline: July 17, 2020

Requested deadline: December 16, 2020

Service of Expert Rebuttal Reports pursuant to FRCP 26(a)(2)

Current deadline: August 18, 2020

Requested deadline: January 20, 2021

Commencement of expert depositions

Current deadline: September 15, 2020

Requested deadline: February 16, 2021

Expert discovery completed by

Current deadline: November 6, 2020

Requested deadline: April 5, 2021

All dispositive motions and motions challenging experts must be filed by

Current deadline: November 19, 2020

Requested deadline: April 19, 2021

Mediation Per LCR 39.1(c), if requested by the parties, held no later than

Current deadline: December 31, 2020¹

Requested deadline: May 5, 2021

**All motions *in limine* must be filed by and noted on the motion calendar no later than
the THIRD Friday thereafter**

Current deadline: January 7, 2021

Requested deadline: June 8, 2021

Agreed pretrial order due

Current deadline: January 29, 2021

Requested deadline: June 30, 2021

¹ The Parties have discussed and do anticipate participating in a third mediation after key depositions have been taken and the Parties have more information upon which to base their respective settlement negotiations.

Trial briefs, proposed *voir dire* questions, jury instructions, neutral statement of the case, and trial exhibits due

Current deadline: February 8, 2021

Requested deadline: July 6, 2021

Jury trial date

Current deadline: February 22, 2021

Requested deadline: July 26, 2021

IV. CONCLUSION

For the reasons stated above, the Parties jointly and respectfully request that this Court grant their motion and continue the current trial date as well as the corresponding pretrial deadlines.

IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

DATED this 28th day of May, 2020.

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STIPULATED MOTION AND ORDER TO CONTINUE
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ORDER

PURSUANT TO THE STIPULATED MOTION, IT IS SO ORDERED.

DATED this 3rd day of June, 2020.



RICARDO S. MARTINEZ
CHIEF UNITED STATES DISTRICT JUDGE

Presented by:

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Certificate of Service

I, Kelsey M. Doyle, certify under penalty of perjury of the laws of the State of Washington that on May 28, 2020, I electronically filed this document entitled STIPULATED MOTION AND [PROPOSED] ORDER TO CONTINUE TRIAL DATE AND RELATED DEADLINES using the CM/ECF system which will send notification of such filing to all attorneys of record.

DATED this 28th day of May, 2020, at Seattle, Washington.

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